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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,196	12/22/2000	Donald E. Weder	8403.303	4068

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/747,196

Applicant(s)

WEDER, DONALD E.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 25-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 25-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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PmP

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 25-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,182,392 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Both Claims 1 are drawn to a floral grouping display assembly comprising a display surface; a floral grouping; and a sheet of material wrapped about at least a portion of the floral grouping, the sheet material being releasably connected to the display surface.

As to Claims 25-27, the limitations of the display surface being a pane of glass, a wall, or a table top is not disclosed. Examiner takes official notice that it was old and notorious well known in the retail nursery art to display floral groupings on a pane of glass (a mirror), a wall, or a table top. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly of 6,182,392 B1 by displaying the floral grouping on a pane of glass (a mirror), a wall, or a table top so as to have an aesthetically pleasing flower shop.

Claims 28-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 of U.S. Patent No. 6,182,392 B1 in view of Weder (US 5,603,406). Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claim 28(application) and Claim 1(6,182,393 B1) are drawn to a floral grouping display assembly comprising a display surface; a floral grouping; and a sheet of material wrapped about at least a portion of the floral grouping, the sheet material being releasably connected to the display surface. Not disclosed is the sheet of material being transparent. Weder ('406) however discloses a transparent sheet of material for a floral grouping (Claim 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly of 6,182,392 B1 by using a transparent sheet of material as disclosed by Weder ('406) to entice customer purchases.

As to Claims 29-31, the limitations of the display surface being a pane of glass, a wall, or a table top is not disclosed. Examiner takes official notice that it was old and notorious well known in the retail nursery art to display floral groupings on a pane of glass (a mirror), a wall, or a table top. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the assembly of 6,182,392 B1 as modified by Weder ('406) by displaying the floral grouping on a pane of glass (a mirror), a wall, or a table top so as to have an aesthetically pleasing flower shop.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Gregoire (US 3,924,354, document AY of Applicant's 1449) .

As to Claim 1, Gregoire discloses a floral grouping display assembly (Fig. 2) comprising a display surface (12 of Fig. 2); a floral grouping (30 of Fig. 4); and a sheet of material wrapped about at least a portion of the floral grouping (32 of Fig. 4), the sheet material being releasably connected to the display surface (defined as connected by friction) and substantially the entire length of the wrapped floral grouping is visibly displayed.

As to Claim 28, Gregoire discloses a floral grouping display assembly (Fig. 2) comprising a display surface (12 of Fig. 2); a floral grouping (30 of Fig. 4); and a sheet of transparent material (col. 3 lines 63-64) wrapped about at least a portion of the floral grouping (32 of Fig. 4), the sheet material being releasably connected to the display surface (defined as connected by friction) and substantially the entire length of the wrapped floral grouping is visibly displayed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3643

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25, 27, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregoire (US 3,924,254).

As to Claims 25 and 27, the limitations of Claim 1 are disclosed as described above. Not disclosed is the display surface a pane of glass or a table top. Examiner takes official notice that it was old and notorious well known in the retail nursery art to display floral groupings on a pane of glass or a table top (*i.e.*, a table top made of glass). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the assembly of Gregoire by placing the box on a glass table top so as to display for customers.

As to Claims 29 and 31, the limitations of Claim 28 are disclosed as described above. Not disclosed is the display surface a pane of glass or a table top. Examiner takes official notice that it was old and notorious well known in the retail nursery art to display floral groupings on a pane of glass or a table top (*i.e.*, a table top made of glass). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the assembly of Gregoire by placing the box on a glass table top so as to display for customers.

Allowable Subject Matter

Claims 26 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and a proper terminal disclaimer is entered.

Response to Arguments

Applicant's arguments with respect to claims 1 and 25-31 have been considered but are moot in view of the new ground(s) of rejection.

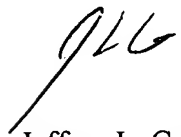
Conclusion

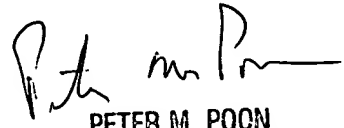
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weder ('393 B1), Weder ('242), Jamison disclosed in the published art various display assemblies for floral groupings.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.


Jeffrey L. Gellner


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